

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

VIRGINIA MELENDEZ,

Plaintiff,

v.

SAM'S WEST, INC. d/b/a EL PASO  
SAM'S CLUB #6502 a/k/a SAM'S CLUB  
#6502.

Defendant.

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Cause No. 3:22-cv-00157

**DEFENDANT'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SAM'S WEST, INC. d/b/a EL PASO SAM'S CLUB #6502 a/k/a SAM'S CLUB #6502 (proper entity being SAM'S EAST, INC.) and file this Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

**I.**

**FACTUAL BACKGROUND**

1. This lawsuit was originally filed on under Cause No. 2021DCV4259, and styled *Virginia Melendez v. Sam's Club, LLC d/b/a Sam's Club #6502*, in the 327<sup>th</sup> District Court, El Paso County, Texas (hereinafter the "State Court Action"). Plaintiff filed a First Amended Petition on January 3, 2022, and amended the style as *Virginia Melendez v. Sam's West, Inc. d/b/a El Paso Sam's Club #6502 a/k/a Sam's Club #6502*.

2. A true and correct copy of the docket sheet from the State Court Action is attached to this Notice as Exhibit A. Pursuant to 28 U.S.C § 1446(a) a true and correct copy of all process, pleadings and orders in the State Court Action are attached to this Notice as Exhibit B.

3. Plaintiff asserts a Texas state law claim for premises liability, alleging that she slipped on a puddle of what appeared to be a clear liquidly substance that resembled chicken grease, causing Plaintiff to fall hard on the floor. Plaintiff alleges she sustained severe injuries to her body. *See* Exhibit B, Pl.'s Second Amended Pet. at ¶ IV.

4. Plaintiff's Second Amended Petition alleges damages of over \$1,000,000.00. *Id.* at ¶ VII.

## **II. BASIS FOR REMOVAL**

5. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1332 and pursuant to 28 U.S.C. § 1441(a). Any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendants to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a). The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of a State and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2).

6. Plaintiff was a Texas citizen at the time that she filed this lawsuit and is currently a Texas Citizen. *See* Exhibits C-D, Plaintiff's Discovery Responses. Plaintiff has lived at 1715 E. Yandell, Apt. B, El Paso, Texas 79912 for approximately seven (7) years. *Id.*

7. On the contrary, Defendant Sam's is not a Texas citizen. That is, Sam's East, Inc. is a corporation which was formed in Arkansas and has its principal place of business in Arkansas. Sam's Club is an assumed name for Sam's East, Inc. *See*, Exhibit E, Assumed Name Certificate.

8. Thus, Plaintiff and Walmart are completely diverse.

9. Further, Plaintiff seeks over \$1,000,000.00, an amount over the \$75,000 threshold

under 28 U.S.C. 1332(a). *Id.*, Exhibit B, Pl.’s Second Amended Pet. Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is also satisfied.

10. Therefore, because Plaintiff and Sam’s are completely diverse, and because Plaintiff seeks damages in an amount over \$75,000.00, this Honorable Court has jurisdiction over Plaintiff’s claim.

### **III. PROCEDURE**

11. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than one year after the commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. *Id.*

12. Plaintiff filed the State Court Action on December 15, 2021. *See* Exhibit B, Pl.’s Orig. Pet. Defendant was served on December 28, 2021. *Id.*, Exhibit B, Return of Citation.

13. Defendant served Plaintiff with Interrogatories and Requests for Admission for the sole purpose of ascertaining Plaintiff’s citizenship on February 17, 2022. *See* Exhibits F-G. Plaintiff served her answers/responses to Defendant’s discovery requests on March 23, 2022. *See* Exhibits C-D. It was on this date that for, the first time, it was ascertainable that Plaintiff was a citizen of Texas. *Id.* Then, on April 29, 2022, Plaintiff filed her Second Amended Petition, stating the amount in controversy is over \$1,000,000.00. *Id.* Accordingly, because less than thirty (30) days have elapsed since this date, Defendant’s Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

14. Venue of this removed action is proper in this Honorable Court pursuant to 28 U.S.C. § 1441(a) as El Paso is the District and Division where the State Court Action is pending.

15. Pursuant to 28. U.S.C. § 1446(d), Defendant will promptly give all parties written notification of the filing of this Notice and will also promptly file a copy with the District Clerk of El Paso County, Texas where the State Court Action is currently pending.

**IV.  
JURY DEMAND**

16. Defendant asked for a state court a jury trial and asks for a jury trial in this Court.

**WHEREFORE, PREMISES CONSIDERED,** Defendant prays that this matter be placed on the Court's docket and for any other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

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SAFI, PAXSON & GALATZAN**  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

In compliance with the Federal Rules of Civil Procedure, I certify that on the 2<sup>nd</sup> day of May 2022, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to counsel for Plaintiff, Daniela Labinoti, Law Firm of Daniela Labinoti, P.C., 707 Myrtle Avenue, El Paso, Texas 79901.

/s/ Laura Enriquez  
Laura Enriquez